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**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**USA COMMERCIAL MORTGAGE  
 COMPANY'S FIRST REPORT OF  
 ACTION TAKEN AND PROGRESS  
 TOWARD CONSUMMATION OF  
 CONFIRMED PLAN OF  
 REORGANIZATION**

**(Affects USA Commercial Mortgage  
 Company)**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

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USA Commercial Mortgage Company (“USACM”), by and through its counsel, hereby submits this First Report of Action Taken and Progress Toward Consummation of Confirmed Plan of Reorganization (“First Report”).<sup>1</sup> This First Report is submitted pursuant to Article VIII, Section T of the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”), Paragraph 74 of the Court’s “Order Confirming the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization,” as Modified Herein” [Docket No. 2376] (the “Confirmation Order”), and the Court’s Order dated April 30, 2007 [Docket No. 3627].

## **I. Introduction**

The confirmed Plan became effective on March 12, 2007 (the “Effective Date”),<sup>2</sup> and this First Report covers the period of March 13, 2007 through June 30, 2007.

As discussed in greater detail below, since the Effective Date, USACM has implemented and substantially consummated the Plan as to USACM, and the Plan in fact is implemented and substantially consummated as to USACM. As set forth in Part II below, the USACM Trust has been established, all of the assets of the USACM estate have been transferred in accordance with the confirmed Plan and Confirmation Order, all of the Compromises set forth in the Plan or approved by the Court pursuant to the Plan after the Effective Date have been effectuated, and USACM has disbursed all Cash in the “USACM Operating Account,” defined below, in accordance with the confirmed Plan. In addition, as discussed in Part III below, objections to all Disputed Claims against USACM are being pursued by the USACM Trust. Finally, as set forth in Part IV below, USACM remains as a party only in a limited number of proceedings.

## **II. Transfer of Assets, Effectuation of Compromises, and Distributions**

1. Since the Petition Date, and at all times relevant to the matters discussed herein, USACM held an operating account, which was established with Cash of USACM from all sources commingled together (“USACM Operating Account”).

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<sup>1</sup> This First Report is filed by USACM, not the USACM Trust, a separate post-confirmation entity, and therefore, only discloses actions taken by USACM. USACM anticipates that the USACM Trust has filed or will file a separate status report.

<sup>2</sup> Unless otherwise provided herein, all capitalized words and terms are defined in the confirmed Plan.

2. The Confirmation Order approved the sale of the assets of FTDF and certain assets of USACM to Compass Partners, LLC (“Compass” and the “Compass Sale”), which is memorialized in an Asset Purchase Agreement dated December 8, 2006 between FTDF and USACM, as sellers, the remaining Debtors, as acknowledging parties, and Compass, as purchaser (the “APA”).
3. After the entry of the Confirmation Order but prior to the Effective Date of the Plan, the Bankruptcy Court entered Orders implementing the Plan, authorizing, in relevant part, USACM to take certain actions to facilitate the closing of the Compass Sale, including “sub-servicing” certain Loan Servicing Agreements (“LSAs”) transferred to Compass pursuant to the confirmed Plan and the APA.
4. On February 16, 2007, the Compass Sale closed. Immediately upon the closing of the Compass Sale:
  - a. The majority of the LSAs to which USACM was a party were transferred to Compass, and Compass assumed control of such property. Compass commenced servicing loans pursuant to the Loan Servicing Agreements.<sup>3</sup>
  - b. Cash Sale Proceeds in the total amount of \$ 47.6 million (the sales price adjusted for previously collected loans under the terms of the APA or “Sale Proceeds”) were transferred by Compass to the USACM and FTDF estates.
  - c. Approximately \$ 4.7 million of the Sale Proceeds was immediately allocated to the USACM estate (“Allocated Net Sale Proceeds”), and an additional sum in the approximate amount of \$1.25 million was deposited in escrow accounts pending the resolution of the “Compass Dispute,” discussed below (“USACM/Compass Dispute Funds”). The Allocated Net Sale Proceeds were paid to and deposited by USACM into its USACM Operating Account, and commingled with other Cash on hand, including with “Effective Date Finalized

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<sup>3</sup> Since the Closing Date, USACM is aware of five loans in which Compass acquired an interest under the APA, the Plan and the Confirmation Order that have been paid off, and disbursements have been made as directed by Compass to Direct Lenders who held interests in those loans.

Prepaid Interest,” as defined below, the “Servicing Fees” USACM earned under the LSAs with the Direct Lenders, Additional Holdbacks (defined as the appraisal costs and collection costs as allowed by the LSAs and certain prepetition receipts that USACM was required to holdback pending determination of their disposition) and interest.

d. Sale Proceeds in the amount of \$9.5 million were held in reserve pending the resolution of disputes related to this portion of the Sale Proceeds (“Unallocated Sales Proceeds”).

i. Of these Unallocated Sale Proceeds, approximately \$8.25 million was deposited in an escrow account pending resolution of a dispute between USACM and FTDF as the allocation of this portion of the Sale Proceeds (“Allocation Dispute”).

ii. The remaining approximately \$ 1.25 million in Unallocated Sales Proceeds, as well as the additional \$1.25 million USACM/Compass Dispute Funds, were deposited into escrow accounts pending resolution of a dispute between Compass and the Debtors related to Compass’s claim that the purchase price was subject to reduction (“Compass Dispute”).

5. On or as of March 12, 2007, the Effective Date of the Plan:

a. USACM Art. VII Reserve. USACM established a Cash reserve pursuant to Art. VII, section B.2 of the confirmed Plan, in the amount of each Disputed Unclassified Claim asserted against USACM and Disputed Claims in Classes A-1 through A-3 (the “USACM Art. VII Reserve”), from Cash on deposit in the USACM Operating Account.

b. USACM Ordered Expense Reserve. Pursuant to the “Order Granting Second Joint Motion for Order for Implementation of Confirmed Plan” [Docket No. 2987], USACM established a Cash reserve with Cash on deposit in the USACM Operating Account to insure that sufficient Cash exists to implement

the Plan (the “USACM Ordered Expense Reserve”).

- c. Establishment of the USACM Trust. The USACM Trust was established and became effective.
  - i. The USACM Trust is operated by management separate from USACM pursuant to the Liquidation Trust Agreement approved as part of the confirmed Plan.
  - ii. All assets of the USACM estate, including among others, Cash, Sale Proceeds, USACM’s interest in the Unallocated Sale Proceeds and the USACM/Compass Dispute Funds, any surplus Cash in the USACM Art. VII Reserve and the USACM Ordered Expense Reserve, and Effective Date Finalized Prepaid Interest, net of the USACM Art. VII Reserve and the USACM Ordered Expense Reserve, vested in the USACM Trust, and USACM caused all necessary disbursements to the USACM Trust to be made.
  - iii. In addition, servicing rights under certain LSAs to which USACM was a party, but which were not transferred to Compass as part of the Compass Sale, were transferred to the USACM Trust or were retained by Post-Effective Date DTDF, and those LSAs are being serviced by management for those Post-Effective Date Entities.
- d. Effectuation of the Intercompany Compromises. The “Intercompany Compromises” set forth in Art. IV, Section E of the Plan among and between, in relevant part, (i) USACM and the Direct Lenders, and (ii) USACM and FTDF, including the releases set forth in Art. IV, Section E and Art. VIII, Section A of the Plan, became effective. All of the Debtors, including USACM, took all actions necessary to make any and all payments and/or transfers of assets required by the Intercompany Compromises. The Intercompany Compromises have been consummated in full, including, in

relevant part, all of the Compromises to which USACM was a party.<sup>4</sup>

i. as part of the compromise among and between USACM and Direct Lenders, set forth in Art. IV, section E.1 of the Plan:

a. Prepaid Interest Collections, together with Post-Closing Prepaid Interest Collections made by Compass as of the Effective Date, were finalized, and this Cash, defined as the “Effective Date Finalized Prepaid Interest,” totaling \$36.3 million, became property of the USACM estate.

b. The Effective Date Finalized Prepaid Interest was transferred from USACM’s collection account to the USACM Operating Account and commingled with other Cash, including USACM’s Allocated Net Sale Proceeds, the 2% Holdback, and the Additional Holdbacks.

c. USACM’s interest in the post-Effective Date Post-Closing Prepaid Interest Collections (defined as the Prepaid Interest sums due from Direct Lenders that Compass is required to recoup and the Prepaid Interest Compass is required to collect from Borrowers and remit to USACM or the USACM Trust, as applicable) was transferred to the USACM Trust.

d. The amount of USACM Professional fees that Direct Lenders are required to reimburse to USACM under the 2% Holdback negotiated by the USACM Committee and the Direct Lenders Committee was calculated to be in the amount of \$351,587 pursuant to instructions provided by counsel for the USACM Committee, and that sum was transferred from USACM’s collection account to the USACM Operating Account, and commingled with other Cash, including USACM’s Allocated Net Sale Proceeds and the Effective Date

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<sup>4</sup> Intercompany Claims between and among USACM and DTDF have not yet been resolved. The resolution of these Claims, however, is being handled by the USACM Trust and Post-Effective Date DTDF under the Plan.

Finalized Prepaid Interest.

e. Each Direct Lender's Servicing Fees were calculated in accordance with their applicable LSA.

f. Servicing Fees and Additional Holdbacks due to USACM as of the Effective Date, in the total approximate amount of \$2.6 million, were paid to USACM from the 2% Holdback. This Cash was transferred from USACM's collection account to the USACM Operating Account, and commingled with funds from other sources including USACM's Allocated Net Sale Proceeds and the Effective Date Finalized Prepaid Interest.

g. Servicing Fees and Additional Holdbacks, totaling \$2.1 million, segregated by USACM as part of the 2% Holdback, which have now been determined to be in excess of the Servicing Fee and other costs owed by a Direct Lender under its LSAs and in excess of the Direct Lender's allocable portion of the \$605,000 for the Direct Lender Committee expenses, have been returned to approximately 1,900 Direct Lenders.

ii. as part of the compromise among and between USACM and FTDF, set forth in Art. IV, section E.2 of the confirmed Plan:

a. "Prepaid Interest Collections" related to FTDF in the total amount of \$2,557,307 (defined in the Plan as the "FTDF Prepaid Interest"), that were being held in USACM's segregated collection account, were transferred on the Effective Date to USACM's operating account, commingled with other Cash, and disbursed in accordance with the confirmed Plan.

b. USACM transferred \$969,000 to FTDF pursuant to an the agreed Professional Fee/Cost Allocation/Management Fees compromise included in the Plan.



c. FTDF transferred all of the “FTDF Litigation Claims,” except the “Non-assignable FTDF Litigation Claims,” to the USACM Trust.

d. All waivers and releases made between FTDF and USACM were deemed effective under the confirmed Plan.

6. Since the Effective Date:

- a. Settlement of the Allocation Dispute. The USACM Trust and FTDF have agreed that FTDF is entitled to \$3.8 million of the approximately \$9.5 million in Unallocated Sale Proceeds, *see* ¶ 4.d *supra*, and the USACM Trust is entitled to the balance, plus any amount of the USACM/Compass Dispute Funds agreed or determined by the Court to be property of USACM in the Compass Dispute. The Court has entered an Order approving this agreement [Docket No. 3958]. As set forth above, USACM’s share of the Unallocated Sale Proceeds transferred to the USACM Trust on the Effective Date, and USACM has no interest in that Cash.
- b. Distributions. All Cash in the commingled USACM Operating Account, including the Allocated Net Sale Proceeds and the Effective Date Netted Prepaid Interest Collections, have been disbursed in accordance with the terms of the confirmed Plan.
- c. Discontinuation of Business Operations. In order to enable the Compass Sale to close, USACM entered into a sub-servicing agreement with Compass to temporarily act as sub-servicer to Compass. That agreement has been terminated. USACM no longer services or sub-services any LSAs, and the servicing licensed issued to it by the State of Nevada Mortgage Lending Division has been terminated.

### **III. Resolution of Proofs of Claim Filed Against USACM**

1. As of the Effective Date, the USACM Trust became responsible for pursuing objections to Claims filed against USACM on behalf of USACM.



2. USACM's Professionals provided the USACM Trust with draft objections and relevant analyses to enable the USACM Trust to file and pursue omnibus objections to thousands of Claims filed against USACM.
3. The Court has entered several Orders with regard to several of these omnibus Claim objections, and the USACM Trust is continuing to prosecute objections to many of the remaining claims.
4. The USACM Art. VII Reserve was initially funded at \$2,050,000 in the event that Administrative Expense, Priority, and Secured Claims, not currently "Allowed," become Allowed Claims. The USACM Trust holds a vested interest in surplus Cash in the Reserve, to the extent that it exists.

#### **IV. Pending Motions, Adversary Proceedings, and/or Contested Matters**

As of the date of this First Report, USACM is still involved in various motions, contested matters, and/or adversary proceedings.

1. Matters before this Court. At this time, other than the Claims litigation set forth above, the only matters pending before this Court involving USACM are (A) the USACM Professionals' Final Fee Applications, (B) a "conditional" adversary proceeding which was filed by Compass against, in relevant part, all of the Debtors on July 7, 2007, designated as Adversary Proceeding No. 07-01105 ("Compass Proceeding"), and (C) litigation brought by Compass to enforce the Confirmation Order against the so-called "Lenders Protection Group" ("LPG"), in which USACM has filed a limited joinder.<sup>5</sup>
  - a. Final Fee Applications. A hearing on the USACM Professionals' Final Fee Applications is scheduled for August 7, 2007. USACM anticipates that matters related those Applications will be concluded at that time, and that USACM will be authorized to make distributions to the USACM Professionals from the USACM Ordered Expense Reserve.

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<sup>5</sup> In addition, USACM has been working with the USACM Trust to resolve the Compass Dispute, and will continue to do so to the extent requested by the USACM Trust.

- b. Compass Proceeding. As of the date of this First Report, USACM has not been served with the Complaint in the Compass Proceeding. USACM intends to file a motion to dismiss the Compass Proceeding, if and to the extent that such a motion is necessary to timely close this case.
    - c. LPG Litigation. Compass brought a motion to enforce the Confirmation Order against the LPG. USACM joined in supporting the Bankruptcy Court's jurisdiction over the litigation. In an opinion dated July 2, 2007, the Court ruled that it had jurisdiction over the motion and related litigation, but recommended withdrawal of the reference. The Court, however, also found that the issues presented in the motion were "non-core" and recommended withdrawal of the reference to the United States District Court for the District of Nevada ("District Court") due to the need for expeditious and unified hearings [Docket No. 4109]. On July 3, 2007, the Court formally recommended that the District Court withdraw the reference of all disputes between Compass and the Direct Lenders [Docket No. 4113].
  2. Matters before the District Court. In addition to the limited matters before this Court, USACM has been a party to three appeals of the Confirmation Order before the District Court. One of these appeals has been dismissed while the other two are still pending.
    - a. USA Investment Partners, LLC and several others, filed an appeal from the Confirmation Order, ultimately designated as District Court No. 07-00138. Pursuant to USACM's motion to dismiss, this appeal has been dismissed with prejudice by the District Court, and the District Court's Order is now final.
    - b. Debt Acquisition Company of America V, LLC ("DACA"), also filed an appeal from the Confirmation Order, ultimately designated as District Court No. 07-00160. USACM filed two motions to dismiss this appeal and fully briefed the appeal. The appeal is currently pending before the District Court.
    - c. Finally, the LPG and the Jones Varges Direct Lenders, filed an appeal from the

1 Confirmation Order, ultimately designated as District Court No. 07-00072.  
 2 USACM, along with the other Debtors, successfully obtained an Order of the  
 3 District Court vacating a stay pending appeal that had been entered by the  
 4 Bankruptcy Appellate Panel, it has defended several requests for stay pending  
 5 appeal, filed two motions to dismiss the appeal, and fully briefed the appeal.  
 6 As with the DACA appeal, this appeal is currently pending before the District  
 7 Court.

8 Respectfully submitted this 16th day of July, 2007.

9  
 10 /s/ Jason A. Imes

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